

REMARKS

In the outstanding Office Action, the Examiner rejected claims 1-11, 16-19, and 23-28 under 35 U.S.C. §103(a) as being unpatentable over Takamoto et al., U.S. Patent No. 5,903,724, in view of Crisler et al., U.S. Patent No. 5,515,379; and rejected claims 12-15 under 35 U.S.C. §103(a) as being unpatentable over Takamoto in view of Crisler and in further view of Duquesnois et al., U.S. Patent No. 6,564,382. Reconsideration is requested.

Applicants note that the present application is related to commonly-owned patent application number 09/649,953, now U.S. Patent No. 7,150,017. Patent application serial number 09/649,953 also is the parent application of continuation application 11/566,749, filed on 5 December 2006. Continuation application 11/566,749 might be considered to have at least one claim similar to at least one claim presented herein. Furthermore the present application is related to commonly-owned patent application number 09/649,954, now U.S. Patent No. 6,959,327.

Applicants have canceled claims 23 and 26 and placed subject matter similar to the subject matter in now canceled claims 23 and 26 into the sole (remaining) independent claim, claim 1. Support for the amendments can be found, e.g., in FIGS. 7, 7A, 14 and associated text and at page 72, line 1 to page 73, line 12; and page 76, lines 8-17.

Amended claim 1 recites the following:

receiving a request for transmitting digital information, the request comprising an identification of a user and transmission constraints including a start time after which transmission may begin and an end time by which transmission should be completed, the digital information corresponding to a number of packets;

determining an estimated time required to transmit the digital information based at least on the number of packets and a network speed;

scheduling a transmit time for the digital information;

determining a cost for transmitting the digital information based at least on the transmission constraints, the estimated time required to transmit, and the transmit time;

accepting the digital information for transmission only if the estimated time required to transmit is less than or equal to a difference between the transmit time and the end time and if the determined cost is less than or equal to a maximum cost associated with the user; and

in response to the digital information being accepted for transmission, transmitting the digital information using the network after the start time and prior to the end time, and billing the determined cost to an account associated with the user.

Amended claim 1.

Now canceled claims 23 and 26 contained subject matter similar to the subject matter added during the present amendment to claim 1. For instance, now canceled claim 23 recited “determining a cost for transmitting the digital information and billing the cost to a client corresponding to the digital information” and now canceled claim 26 recited “A method, as in claim 23, wherein the request further includes a maximum cost at which the client can be billed and accepting further comprises accepting the digital information for transmission only if the time required to transmit is less than or equal to the difference between the transmit time and the end time and the determined cost is less than or equal to the maximum cost.”

The Examiner asserted that although neither Takamoto nor Crisler disclosed the subject matter of claims 23 and 26, this subject matter was nonetheless known to one skilled in the art. However, neither Takamoto nor Crisler (alone or in combination) discusses determining costs for transmitting digital information and billing clients for costs associated with transmission of digital information. In fact, these references are *entirely unconcerned* with costs and billing clients for costs associated with transmission of digital information.

The Examiner is respectfully reminded that to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). See also M.P.E.P.

§2143.03. If the Examiner is correct that determining costs for transmission of digital information and billing clients for costs associated with transmission of digital information was known to one skilled in the art at the time of the invention herein, the Examiner should therefore easily be able to provide a reference that discloses “**determining a cost for transmitting the digital information based at least on the transmission constraints, the estimated time required to transmit, and the transmit time**”; “accepting the digital information for transmission only if the estimated time required to transmit is less than or equal to a difference between the transmit time and the end time **and if the determined cost is less than or equal to a maximum cost associated with the user**”; and “**billing** the determined cost to an account associated with the user” as recited in amended independent claim 1.

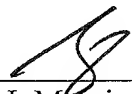
Applicants therefore request the Examiner cite a reference (or references) that discloses or implies at least this subject matter from claim 1. If the Examiner cannot find such a reference (or references), then the Applicants request that the Examiner allow the application.

The dependent claims are all allowable at least by virtue of their dependency from allowable independent claim 1. Thus, the individual merits of the dependent claims need not be discussed at this juncture.

For at least these reasons, Applicants respectfully submit that claims 1-19 and 23-28 are patentable over the cited art and request the rejections to claims 1-19 and 23-28 be withdrawn.

S.N. 09/649,973
Art Unit: 2155

Respectfully submitted:



Robert J. Mauri
Reg. No.: 41,180

4/17/07

Date

Customer No.: 48237

HARRINGTON & SMITH, LLP
4 Research Drive
Shelton, CT 06484-6212

Telephone: (203)925-9400
Facsimile: (203)944-0245
email: rmauri@hspatent.com

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. BOX 1450, Alexandria, VA 22313-1450.

Name of Person Making Deposit

Date